

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA

Beckley Division

SHELDON SEARS, Executor
and Personal Representative of
The Estate of James G. Sears Jr.,
Deceased,

Plaintiff,

v.

Civil Action No. 5:15-cv-07495

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Nature of the Action

1. This is an action against the United States of America under the Federal Tort Claims Act, 28 U.S.C. §§ 2671, et seq., for damages sustained as a result of the negligent medical treatment and care of James G. Sears Jr. by the Veterans Administration (“VA”), its physicians and employees, in failing to diagnose or treat over a period of ten years, James G. Sears Jr.’s colon cancer, thereby causing his death.

The Parties

2. The decedent, James G. Sears Jr., (sometimes referred to hereafter as “Mr. Sears”), was a Vietnam veteran who served in the United States Army and was honorably discharged in November 1970. As a result of his military service, he was entitled to receive health care services from VA Medical Centers. Mr. Sears died on May 9, 2014 as a result of medical malpractice committed by the VA Medical Centers.

3. Plaintiff Sheldon Sears is the son of decedent James G. Sears Jr. and is authorized by law to bring this action on behalf of the Estate of James G. Sears Jr. as the duly appointed and qualified Executor of the Estate of James G. Sears Jr.

4. James G. Sears Jr. is survived by his daughter, Barbara Vandegrift; his son, Sheldon Sears; his mother Anna Mae Dowdy Sears; his sisters, Darlene Gee, Linda Sears, Ann Huffman, and Charlene Romine; his brother Billy Sears; and his grandchildren, Allison Vandegrift and Sheldon Sears Jr.

5. The Veterans Administration is an agency of Defendant United States of America that operates health care facilities for military veterans, known as VA Medical Centers, throughout the country, including the VA Hospital in Beckley, West Virginia. In operating these Medical Centers, Defendant United States of America, acting by and through the Veterans Administration, held itself out to military personnel and their dependents to use that degree of care, skill, diligence, and attention used by hospitals generally in the community in the care and treatment of patients. The Medical Centers operated by Defendant have in their employ, among others, doctors, nurses, interns, residents, student nurses, nurses' aides and other hospital personnel over which they exercise exclusive control and supervision, with the right to employ and discharge such employees.

Jurisdiction and Venue

6. This Court is vested with jurisdiction pursuant to 28 U.S.C. § 1346(b) in that this action arises under the Federal Tort Claims Act, 28 U.S.C. §§ 2671, et seq.

7. James G. Sears Jr. resided in Union, Monroe County, West Virginia, which is within the Southern District of West Virginia. The acts and omissions complained of herein

occurred within the Southern District of West Virginia and, therefore, venue is proper in this Court.

James G. Sears Jr.'s Death

8. Prior to and during the 1990's and 2000's James G. Sears Jr. was treated at VA Medical Centers, including the VA Hospital in Beckley, West Virginia.

9. In or about 2003 and continuing thereafter through 2014 James G. Sears Jr. sought treatment at VA Medical Centers for a number of conditions, including rectal bleeding, colon polyps, abdominal pain and post-traumatic stress syndrome. Although James G. Sears Jr. was in fact suffering from cancer, specifically primary colon cancer, the VA Medical Centers and physicians failed to conduct appropriate diagnostic tests and surgery.

10. Despite the fact that a cecal mass was identified as villous adenoma in 2003 when James G. Sears Jr. underwent a colonoscopy at the Beckley VA Hospital, the polyp was neither treated nor removed and at no time was his true medical condition diagnosed or treated by any of the VA Medical Centers from which he sought treatment until May 2013.

11. In May 2013, James G. Sears Jr. became acutely ill with appendicitis. During and immediately following his appendectomy, health care providers at the VA Medical Centers identified and diagnosed Mr. Sears' colon cancer.

12. The type of cancer from which James G. Sears Jr. suffered is a cancer which, if properly diagnosed and treated, has an excellent prognosis for cure or a significantly longer life span.

13. On May 9, 2014 James G. Sears Jr. died from colon cancer. The failure of the VA health care system to properly diagnose and treat Mr. Sears' cancer proximately caused his premature death.

The Administrative Claims Process

14. On January 23, 2014, James G. Sears Jr. filed a formal administrative claim with the Department of Veterans Affairs. In the administrative claim, Mr. Sears offered to resolve his claim against the VA for \$639,463.00.

15. Following James Sears' death, Plaintiff filed a formal amended administrative claim with the Department of Veterans Affairs. In the administrative claim filed on September 4, 2014, Plaintiff offered to resolve this wrongful death claim for \$1,129,540.00.

16. Prior to the end of the required six-month waiting period, the VA's counsel requested an interview of Sheldon Sears. The interview took place on February 23, 2015.

17. On or about March 12, 2015, the VA offered to settle Plaintiff's wrongful death claim for \$100,000. Plaintiff declined the offer. On April 24, 2014, Plaintiff gave pre-suit notice of his claim to the Beckley VA Medical Center. No response was received within the thirty-day period set by law and as of the date of this Complaint, no response has been received. Therefore, the Plaintiff may file this suit. See 28 U.S.C. § 2675(a).

Plaintiff's Claim for Wrongful Death

18. Defendant United States of America, acting by and through the Veterans Administration, its physicians and employees, grossly deviated from the acceptable standard of care for medical treatment by failing to diagnose and treat James G. Sears Jr.'s colon cancer and thereby proximately caused the wrongful death of James G. Sears Jr.

19. As the direct and proximate result of the negligent acts and omissions of Defendant United States of America, acting by and through the Veterans Administration, its physicians and employees, the survivors of James G. Sears Jr. have suffered and continue to suffer substantial damages, including the following:

- a. Debilitating and intense sorrow, grief and severe mental anguish and pain and suffering;
- b. Loss of happiness, solace, society, comfort, guidance, friendship, companionship, kindly offices, affection and advice of their deceased son/brother/father/grandfather;
- c. Loss of income and future income resulting from his death;
- d. Loss of services, protection, care and assistance provided by James G. Sears Jr.; and
- e. All medical, funeral and other expenses permitted by law.

WHEREFORE, Plaintiff Sheldon Sears demands judgment against Defendant in this wrongful death suit against the United States as follows:

- a. Compensatory damages in the sum of \$1,129,540.00;
- b. Costs and attorneys' fees incurred in this action; and
- c. Such other and further relief as the Court deems appropriate.

PLAINTIFF DEMANDS A TRIAL BY THIS COURT ON ALL ISSUES SO TRIABLE.

SHELDON SEARS, Executor and Personal
Representative of the Estate of James G.
Sears Jr.,

Plaintiff,

BY COUNSEL:

/s/ Robert B. Allen

Robert B. Allen (WVSB # 110)
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